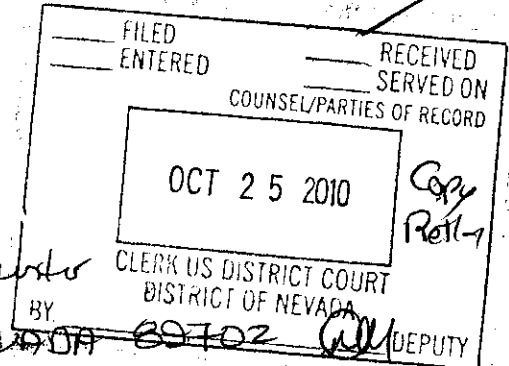


JOHN COLWELL
Name 33742

Northern Nevada Correctional Center
P.O. Box 7000, CARSON CITY, NEVADA
Prison Number



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN COLWELL,
Plaintiff,

vs.
Robert Bannister,
Medical Director NDOC,
Howard Skolnik, Director,
Nevada Department of
Corrections 5 JOHN DOES
ET. AL. 5 JANE DOES
Defendant(s).

3:10-cv-00669

CASE NO. _____
(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

JURY TRIAL DEMANDED

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, JOHN COLWELL
(Print Plaintiff's name)

who presently resides at Northern Nevada Correctional Center, were

violated by the actions of the below named individuals which were directed against

Plaintiff at Said N.N.C.C., NSP on the following dates
(institution/city where violation occurred)

_____, _____, and _____
(Count I) (Count II) (Count III)

**Make a copy of this page to provide the below
information if you are naming more than five (5) defendants**

2) Defendant Robert Bannistr resides at Northern Nevada Correction Center
(full name of first defendant) (address if first defendant)
 and is employed as MEDICAL DIRECTOR. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Defendant Bannistr was acting under Color
of law when he denied Plaintiff A SERIOUS AND LIFE
THREATENING MEDICAL PROCEDURE

3) Defendant HOWARD SKOLNIK resides at NDOC CENTRAL OFFICE
(full name of first defendant) (address if first defendant) 89702
 and is employed as DIRECTOR, NDOC. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Defendant Skolnik is responsible at all times
for the actions of Defendant Bannistr

4) Defendant To be named at resides at a later date.
(full name of first defendant) (address if first defendant)
 and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
 ____ individual ____ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: _____

5) Defendant To be named resides at at a later date.
(full name of first defendant) (address if first defendant)
 and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
 ____ individual ____ official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: _____

6) Defendant To be named at resides at a later date,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

28 USC § 1915 (e), (1), 28 USC § 3626 (A)
and F.A.C.P. 65 (A)

B. NATURE OF THE CASE

1) Briefly state the background of your case.

Plaintiff is a 63 year old prisoner, who due
to his cataract has total blindness in right eye.
This was originally diagnosed in 2003. On or about
09/12/09 Plaintiff requested eye exam and cataract
consult. 10/06/09 Plaintiff examined by Dr. Fischer,
at Loulock Correctional Center. Dr Fischer stated that there
was no damage to @ eye and he was recommending
cataract consult. 02/17/10 Plaintiff was informed that
a Dr. Scott had discontinued cataract consult order
on 09/13/09. 02/18/10 Plaintiff was told by Dr Geddny.
"you don't fit the criteria" and there is a "one eye
only policy with NDOC. The grievance process
(continued on pg 3A)

C. CAUSE OF ACTION

1.) continued from page 3

was started on 02/22/10. Informal Grievance response was cataract surgery is "cosmetic/elective" surgery is "non-essential" despite recommendation from Dr. Fischer. "It is not considered for repair" by Utilization Review.

First level grievance filed 03/20/10. The response was "surgery at present non-essential"

Second level grievance filed 04/20/10. The response on 06/15/10 "cataract surgery is not an emergency" you should be evaluated periodically the degree of impairment"

Plaintiff by Administrative Regulation allowed only one hour per calendar year to review medical records.

On 05/11/10 a response by John Keist CN111 stated that medical records are missing.

October 2001, During yearly physical with Dr. Synder, Plaintiff complained of total loss of vision in right eye. Cataract consult was ordered.

October 23, 2002 Plaintiff was escorted to Private physician in Carson City (Name in lost medical records) Physician recommended cataract surgery stating "it's the worst cataract I've seen in a while".

On September 17 and September 23, 2003 Utilization Review Panel refused cataract surgery

October 2003 Grievance process was started Copies of all levels of Grievances are available

Defendants conduct is extreme and outrageous because they are in a special relationship toward Plaintiff and behaved with medical

Indifference

COUNT I

The following civil rights has been violated: Violation of
the Eight Amendment and 42 USC
§ 1983 and Fourteenth Amendment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

The actions of Defendants from October
2001 through June 17, 2010 as set forth
violated Plaintiff's constitutional protection
against cruel and unusual punishment. The
described actions and omissions, engaged
under color of state law by Dr. Scott,
Dr Snyder, and Dr Baroniste individually
collectively, egregiously as above set out with
willful indifference to deliberate disregard
for statutory civil rights of Plaintiff deprived
him of rights, privileges and immunities
guaranteed by the eighth amendment to
the United States and 42 USC § 1983
for which defendants are individually
liable. Based on information and belief the
official policy at NDOC is to remove cataracts
in one eye only. Sight in one eye is what
a prisoner receives. Based on information and
belief this policy results from NDOC's
(cont in 4A)

Supporting Facts (Continued)

Lack of Funds. I now have total loss of vision in right eye. I bump into metal bunk and other protruding metal door jams. I also bump into other inmates and people from time to time. I have had heated arguments with other prisoners. Almost resulting in fights. My left eye tires when reading or watching tv. My eye is blinded by the light.

COUNT II

The following civil rights has been violated: Violation of
Constitutional Rights (Injunctive and
Declaratory Relief

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff is entitled to medical treatment
upon his conviction and confinement
within NDOC. Defendants Dr Barrister,
M.D. and Howard Skolnik, Director NDOC
individually and collectively egregiously
failed promptly to provide plaintiff
with such medical relief / treatment

Defendants breached their "Special
Relationship" by not following their
own physicians and consultants
recommendations. The NDOC ordered
consultant ophthalmologist recommended
cataract surgery on 09/23/02. Plaintiff has
total loss of vision, pain and suffering
and possible permanent injury

outline).

- a) Defendants: n/a
- b) Name of court and docket number: _____
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):

- d) Issues raised: n/a
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**
 ___ Yes X No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: n/a
- b) Name of court and case number: n/a
- c) The case was dismissed because it was found to be (check one): n/a frivolous
 ___ malicious or ___ failed to state a claim upon which relief could be granted.
- d) Issues raised: n/a
- e) Approximate date it was filed: n/a
- f) Approximate date of disposition: n/a

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: n/a
- b) Name of court and case number: n/a

c) The case was dismissed because it was found to be (check one): n/a frivolous
n/a malicious or n/a failed to state a claim upon which relief could be granted.

d) Issues raised: n/a

e) Approximate date it was filed: n/a

f) Approximate date of disposition: n/a

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: Not applicable

b) Name of court and case number: n/a

c) The case was dismissed because it was found to be (check one): _____ frivolous
n/a malicious or n/a failed to state a claim upon which relief could be granted.

d) Issues raised: n/a

e) Approximate date it was filed: n/a

f) Approximate date of disposition: n/a

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? X Yes ___ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) n/a disciplinary hearing; (2) n/a state or federal court decision; (3) n/a state or federal law or regulation; (4) ___ parole board decision; or (5) n/a other _____.

If your answer is "Yes", provide the following information. Grievance Number 20062893914

Date and institution where grievance was filed 02/22/10 UNCC and
(2) 1746 10/04/03 at Nevada State Prison

Response to grievance: cataract surgery is elective/cosmetic
not considered for repair by Utilization
Review⁽²⁾ you are being treated according NDOC policy

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

1. Injunction ordering Plaintiff to be immediately examined by qualified ophthalmologist to ascertain a candidate for cataract surgery. That such surgery be ordered
2. Declarative judgment that policies, practices, and acts complained of herein are illegal and unconstitutional
3. Compensatory damages be determined at trial.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped
prepare this complaint if not Plaintiff)

John Osweil
(Signature of Plaintiff)

October 19, 2010
(Date)

(Additional space if needed; identify what is being continued)

